

pieces. Once the interior space 13 is filled, the animal food is pressed through the bores 19 of the first extractor plates 16 and is extruded via the outlet 15 (cf. King at col. 3, line 48 to col. 4, line 24).

The Examiner identifies the chute 27 as the claimed “forming space”. However, a person having ordinary skill in the art would understand that the chute 27 is not a forming space because the final form of the product is not defined by the chute 27. Instead and as outlined in col. 4, lines 5 to 7 of *King*, the flesh and bones of the animal food are pressed through the bores 19 of the first extractor plate 16 as the plunger 14 advances. In this manner, the final form of the product is defined. The cutter 28 and the rotary slicer 29 only serve to coarsely size and preslice the animal food so that the interior space 13 is evenly filled (cf. King, col. 3, lines 49 to 53). The cutter 28 and the rotary slicer 29 do not slice the animal food into portions defining the final size of the product. This is in further contrast to Applicants’ claim 1, which sets forth “a cutting device for portioning the mass filled into the forming space into a plurality of mass portions.”

In order for a reference to anticipate the invention in a claim, the reference must teach each and every element in the precise arrangement set forth in the claim. *See* MPEP § 2131. If the reference fails to teach even one of the claimed elements, the reference does not and cannot anticipate the claimed invention. Because *King* fails to disclose “a forming space” and “a cutting device for portioning the mass filled into the forming space into a plurality of mass portions”, *King* fails to anticipate Applicants’ independent claim 1. Therefore, for at least this reason, Applicants respectfully request that the Examiner withdraw the rejection.

Because claims 2, 3, 8, 10, and 12 depend from independent claim 1, Applicants submit that these claims are also patentable. Furthermore, each of these claims recites a unique combination of elements not disclosed or suggested by *King*.

Independent claim 13, as well as dependent claim 15, are patentable for at least the same reasons as independent claim 1. Consequently, Applicants request that the Examiner withdraw the rejection of these claims.

*Claims 1-5, 8-10, 12, 13, and 15-17 over Stahl*

Claims 1-5, 8-10, 12, 13, and 15-17 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 5,003,666 to Stahl et al. (hereinafter *Stahl*). Of the rejected claims, claims 1 and 13 are the sole independent claims and claims 6 and 7 have been cancelled. The

Examiner contends that *Stahl* shows or teaches all the elements of the rejected claims. Applicants respectfully traverse the Examiner's contention.

*Stahl* discloses a method and a device for forming stuffed food products having one flat end by cutting a slit 84 in a food casing 22 forward of a stuffing horn and then inserting an end flattening disc 74 directly into the casing 22 through the slit 84. The disc is held by a disc holding fixture 34. The Examiner argues that the disc holding fixture 34, together with the seal ring opening 56, constitute a forming space, as set forth in Applicants' claim 1.

Although the Examiner is arguably correct in asserting that the food casing 22 is guided between the disc holding fixture 34 and the seal ring opening 56, the diameter of the food casing 22 thus defined does not have to be identical to the diameter of the final product. The diameter of the final product is mainly defined by the diameter of the inserted disc 74 and the volumetric flow of the introduced stuffed food product 90. As the food casing 22 is elastic, diameters bigger or smaller than the diameter of the disc 74 and the diameter of the seal ring opening 56 can be realized. For example, Fig. 14 of *Stahl* includes a member 119 that forces the food casing 22 into a different diameter. Furthermore, the food casing 22 may be forced into an oval shape (cf. *Stahl* at col. 7, line 38). Thus, the seal ring opening 56 and the disc holding fixture 34 do not constitute a "forming space" as set forth in Applicant's independent claim 1.

In order for a reference to anticipate the invention in a claim, the reference must teach each and every element in the precise arrangement set forth in the claim. See MPEP § 2131. Because *Stahl* fails to disclose "a forming space," *Stahl* fails to anticipate Applicants' independent claim 1. Therefore, for at least this reason, Applicants respectfully request that the Examiner withdraw the rejection.

Claim 1 is patentable for at least an additional reason over the disclosure in *Stahl*. Specifically, the cutting device 70 does not serve for portioning the products but, instead, merely opens the food casing 22 so that the disc 74 can be introduced. In other words, the cutting device 70 cuts a slit 84 into the food casing 22. If the cutting device 70 were operating to portion the products, the cutting device 70 would have to completely cut through the food casing 22. However, this is clearly not the case because otherwise the stuffed food products would uncontrollably leave the food casing 22. The actual portioning of food casing 22 is presumably performed when the clippers 30 and 32 are closed. (Cf. *Stahl* at col. 4, lines 46-55).

Consequently, Stahl fails to disclose “a cutting device for portioning the mass filled into the forming space into a plurality of mass portions” and that “the slit extends far enough through the wall so that the cutter can cut completely through a cross section of the forming space.” In order for a reference to anticipate the invention in a claim, the reference must teach each and every element in the precise arrangement set forth in the claim. *See* MPEP § 2131. Hence, *Stahl* fails to anticipate Applicants’ independent claim 1. For at least this additional reason, Applicants respectfully request that the Examiner withdraw the rejection.

Because claims 2-5, 8-10, and 12 depend from independent claim 1, Applicants submit that these claims are also patentable. Furthermore, each of these claims recites a unique combination of elements not disclosed or suggested by *Stahl*.

Independent claim 13, as amended, is patentable for at least the same or similar reasons as independent claim 1, as remarked above. Because claims 15-17 depend from independent claim 13, Applicants submit that these claims are also patentable for at least the same reasons discussed above. Furthermore, each of these claims recites a unique combination of elements not taught, disclosed or suggested by *Stahl*. Consequently, Applicants request that the rejection of these claims be withdrawn.

*Claims 1-3, 8, 10, 12, 13, and 15 over Kobayashi*

Claims 1-3, 8, 10, 12, 13, and 15 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 5,004,619 to Kobayashi et al. (hereinafter *Kobayashi*). Of the rejected claims, claims 1 and 13 are the sole independent claims and claims 6 and 7 have been cancelled. The Examiner contends that *Kobayashi* shows or teaches all the elements of the rejected claims. Applicants respectfully traverse the Examiner’s contention.

*Kobayashi* discloses a process for wrapping and sealing on the circumference of a solid state food material with one or more “clayish” stated food material in layer condition, thereby forming a globular shape. The core S can be dough that is surrounded by sugar-containing layers. The core S is brought into a co-extrusion unit 2 having a cylindrical chamber 22 by means 5. In the chamber 22, the core S is coated with mass P. Then the coated core S leaves the unit via output passage 21 (cf. *Kobayashi* at Figs. 15 and 16). The diameter of the output passage 21 can be varied by gate 3. The gate 3 is initially closed and continuously opens

until it has reached a maximum diameter before it starts closing until it is completely shut again, thereby finishing the coating of the core.

The Examiner identifies the chamber 23 as the claimed “forming space” and contends that the gate 3 acts as a cutter that is introduced into the chamber 23. *Kobayashi* teaches that the cores S to be coated are portioned before any interaction with the gate 3. The gate 3 only serves for starting and stopping the supply of mass P. To that end, the gate 3 functions as a valve, rather than having a function characteristic of a cutter. Hence, *Kobayashi* fails to disclose “a cutting device for portioning the mass filled into the forming space into a plurality of mass portions”, *Kobayashi* fails to anticipate Applicants’ independent claim 1. In order for a reference to anticipate the invention in a claim, the reference must teach each and every element in the precise arrangement set forth in the claim. *See* MPEP § 2131. Therefore, for at least this reason, Applicants respectfully request that the Examiner withdraw the rejection.

Claim 1 is patentable for at least an additional reason over the disclosure in *Stahl*. Specifically, the wall surrounding the chamber 23 in *Kobayashi* fails to include a slit through which a cutter can be introduced into the forming space. Hence, *Kobayashi* fails to disclose that the wall bounding the forming space includes “a slit” that permits the cutter of “the cutting device” to be “at least partially introducible ... into the forming space.” In order for a reference to anticipate the invention in a claim, the reference must teach each and every element in the precise arrangement set forth in the claim. *See* MPEP § 2131. For at least this additional reason, *Kobayashi* fails to anticipate Applicants’ independent claim 1. Therefore, Applicants respectfully request that the Examiner withdraw the rejection.

Because claims 2, 3, 8, 10, 12, 13, and 15 depend from independent claim 1, Applicants submit that these claims are also patentable. Furthermore, each of these claims recites a unique combination of elements not disclosed or suggested by *Kobayashi*.

Independent claim 13, as amended, is patentable for at least the same or similar reasons as independent claim 1, as remarked above. Because claim 15 depends from independent claim 13, Applicants submit that this claim is also patentable for at least the same reasons discussed above. Furthermore, this dependent claim recites a unique combination of elements not taught, disclosed or suggested by *Kobayashi*. Consequently, Applicants request that the rejection of these claims be withdrawn.

Claims 1-4 and 12-17 over Abler

Claims 1-4 and 12-17 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 5,230,267 to Abler et al. (hereinafter *Abler*). Of the rejected claims, claims 1 and 13 are the sole independent claims and claims 6 and 7 have been cancelled. The Examiner contends that *Abler* shows or teaches all the elements of the rejected claims. Applicants respectfully traverse the Examiner's contention.

*Abler* teaches an apparatus for decurling food material such as slices served from a food material supply while the slices are being moved towards a transfer member that includes a constriction positioned in close proximity to a slicing member. The food is stored in magazine 24 that can perform translational movements in a way that the food is brought into contact with a stationary slicing knife 26. Thereby, the food is portioned into slices 13 that are further transported by belts 15.

The Examiner asserts that *Abler* discloses "a forming space (item 20 – figure 1)" and "the cutting device having a cutter that is at least partially introducible into the forming space (item 20 – figure 1)." In contrast, *Abler* discloses the forming space inside item 20 ends at the level of the lower end of the wall defined by the magazine 24, which is above the knife 26. Below this lower end, the food material supply 22 is no longer supported by, or otherwise contacted by, the wall of the magazine 24 for forming. Thus, the lower end of the wall about magazine 24 defines an outlet opening from the forming space inside item 20 and ends at a level above the knife 26. It follows that the wall of the magazine 24 of item 20 also fails to include a slit into which the knife 26 is introduced.

*Abler* fails to disclose that the wall bounding the forming space includes "a slit" that permits the cutter of "the cutting device" to be "at least partially introducible ... into the forming space. In order for a reference to anticipate the invention in a claim, the reference must teach each and every element in the precise arrangement set forth in the claim. See MPEP § 2131. Consequently, *Abler* fails to anticipate Applicants' independent claim 1. Therefore, for at least this reason, Applicants respectfully request that the Examiner withdraw the rejection.

Because claims 2-4 and 12 depend from independent claim 1, Applicants submit that these claims are also patentable. Furthermore, each of these claims recites a unique combination of elements not disclosed or suggested by *Abler*.

Independent claim 13, as amended, is patentable for at least the same or similar reasons as independent claim 1, as remarked above. Because claims 14-17 depend from independent claim 13, Applicants submit that these claims are also patentable for at least the same reasons discussed above. Furthermore, each of these claims recites a unique combination of elements not disclosed or suggested by *Abler*. Consequently, Applicants request that the rejection of these claims be withdrawn.

#### **Claim Rejection under 35 U.S.C. § 103(a)**

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *King* in view of U.S. Patent No. 6,797,213 to Bortone et al. (hereinafter *Bortone*). *Bortone* fails to remedy the deficiencies of *King*. Because claim 11 depends from independent claim 1, Applicants submit these claims are also patentable for at least the same reasons discussed above. Furthermore, dependent claim 11 recites a unique combination of elements not disclosed or suggested by the combination of *King* with the secondary reference *Bortone*.

#### **Conclusion**

Applicants have made a bona fide effort to respond to each and every requirement set forth in the Office Action. In view of the foregoing remarks, this application is submitted to be in complete condition for allowance and, accordingly, a timely notice of allowance to this effect is earnestly solicited. In the event that any issues remain outstanding, the Examiner is invited to contact the undersigned to expedite issuance of this application.

Applicants do not believe fees are due in connection with filing this communication. If, however, any petition or additional fees are necessary as a result of this communication, the Commissioner is hereby authorized to charge any under-payment or fees associated with this communication or credit any over-payment to Deposit Account No. 23-3000.

Respectfully submitted,  
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